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Filing date: **11/26/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91179480
Party	Plaintiff Plasti-Fab Ltd.
Correspondence Address	David E. Sipiora Townsend and Townsend and Crew LLP 1200 17th Street, Suite 2700 Denver, CO 80202 UNITED STATES denverteas@townsend.com
Submission	Motion to Compel Discovery
Filer's Name	David E. Sipiora
Filer's e-mail	denverteas@townsend.com
Signature	/des/
Date	11/26/2008
Attachments	Renewed MTC.pdf (3 pages)(102891 bytes) Renewed MTC_Exhibit A.pdf (9 pages)(261949 bytes) Renewed MTC_Exhibit B.pdf (9 pages)(256895 bytes) Renewed MTC_Exhibit C.pdf (13 pages)(381960 bytes) Renewed MTC_Exhibit D.pdf (37 pages)(886347 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

In re: Application Ser. Nos. 79/023,935 and 79,023,934
Published: August 7, 2007, in the Official Gazette
Applicant: Kobelco Construction Machinery Co., Ltd.
Mark: **GEOSPEC and ACERA GEOSPEC (and design)**
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

vs.

KOBELCO CONSTRUCTION
MACHINERY CO., LTD.

Applicant.

Consolidated Opposition Nos.
91179480 (parent) and 91179842

**OPPOSER'S RENEWED MOTION TO
COMPEL**

Opposer Plasti-Fab Ltd. ("Opposer") hereby submits this Renewed Motion to Compel production of documents responsive to Request for Production Nos. 1-28 and answers to Interrogatory Nos. 1-29 from Applicant Kobelco Construction Machinery Co., Ltd. ("Kobelco"). Due to Kobelco's failure to timely respond, Requests for Admission Nos. 1-20 are now deemed admitted by Kobelco.

Opposer served its First Set of Requests for Admission, Requests for Production of Documents, and Interrogatories on September 2, 2008. Copies of Opposer's discovery requests are attached as Exhibits A-C. By operation of the TBMP, responses and answers to this discovery were due no later than October 2, 2008. On October 7, 2008, Kobelco filed a motion for a 30-day extension to respond to Opposer's discovery requests. If the TTAB had granted the motion, Kobelco's discovery responses would have been due November 6, 2008. Opposer filed its first Motion to Compel on October 28, 2008. A copy of Opposer's original motion to compel

is attached as Exhibit D. To date, Opposer has not received any response to the original Motion to Compel. In addition, to date, Kobelco has provided no responses to any of Opposer's discovery requests.

It should be noted that Opposer does not seek to compel answers to Opposer's Requests for Admission Nos. 1-20, as they are deemed admitted due to Kobelco's failure to timely respond. TBMP § 527.01(d) ("If a party upon which requests for admission have been served fails to file a timely response thereto, the requests will stand admitted (automatically), and may be relied upon by the propounding party pursuant to 37 CFR § 2.120(j)(3)(i)..."). Thus, Opposer respectfully renews its motion to the Board for an order compelling full responses to Opposer's request for production and interrogatories.

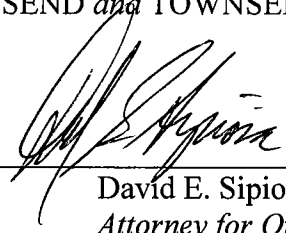
Opposer also requests that the Board confirm suspension of the current proceedings. A motion to compel discovery suspends the proceeding pending resolution of the discovery dispute. TBMP § 523.01. Opposer filed its first Motion to Compel Discovery on October 28, 2008, but has not received a suspension order from the Board. Opposer's testimony period ends on November 28, 2008. As such, Opposer respectfully requests confirmation of the suspension of the proceeding prior to expiration of its testimony period to ensure protection of its rights.

Respectfully submitted,

TOWNSEND *and* TOWNSEND *and* CREW LLP

Date: November 26, 2008

By: _____


David E. Sipiora
Attorney for Opposer

Townsend and Townsend and Crew LLP
1200 Seventeenth Street, Suite 2700
Denver, Colorado 80202
Telephone: (303) 571-4000
Facsimile: (303) 571-4321

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2008, I served the foregoing OPPOSER'S
RENEWED MOTION TO COMPEL on counsel for Applicant by depositing a true and correct
copy of the same with the United States Postal Service, first class mail, postage prepaid, in an
envelope addressed to:

Bassam N. Ibrahim
Buchanan, Ingersoll & Rooney PC
1737 King Street, Suite 500
Alexandria, Virginia 22314-2727

/Kara E. Fielder/

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial Nos. 79/023,935 and 79/023,934
Published: August 7, 2007
Applicant: Kobelco Construction Machinery Co., Ltd.
Mark: GEOSPEC and ACERA GEOSPEC (and design)
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

v.

KOBELCO CONSTRUCTION MACHINERY
CO., LTD,

Applicant.

Opposition No. 91179480 (parent)
Opposition No. 91179482

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION (NOS. 1- 20)

Opposer Plasti-Fab Ltd. ("Opposer"), by counsel, propounds the following requests for admission ("RFAs") to be fully and separately answered in writing by an officer or duly authorized agent of Applicant Kobelco Construction Machinery Co., Ltd. ("Applicant"), within thirty (30) days of the date of service hereof, or at such other time and place as may be mutually agreed upon by the parties, in accordance with Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 36 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

A. These RFAs seek answers as of the date on which Applicant responds and, as to those RFAs addressed to matters falling within Rules 26(e)(1) and (2) of the Federal Rules of Civil Procedure, shall be deemed to be continuing, requiring Applicant to serve upon Opposer such further answers promptly after Applicant has acquired additional knowledge or information relating in any way to those RFAs.

B. Where the RFAs request the identity of:

1. a person, state the name and current or last known address of each person, employer or business affiliation, and occupation and business position held;

2. a company, state the name, place of incorporation or organization, principal place of business, and the identity of the persons having knowledge of the matter with respect to which the company is named;

3. a document, state:

a) the identity of the person or persons who prepared it, the sender and recipient, if any;

b) the title or a description of the general nature of its subject matter;

c) the date of preparation;

d) the date and manner of distribution and publication, if any;

e) the location of each copy and the identity of the present custodian;

f) the identity of the person or persons who can identify it;

g) the contents of the document verbatim (or, in lieu thereof, a copy of the document); and

- h) if privilege is claimed, the specific basis for the claim;
4. an act or event, state:
- a) a description of the act or event;
 - b) when it occurred;
 - c) where it occurred;
 - d) the identity of the person or persons performing said act (or, in case of an omission, the identity of the person or persons failing to act) or involved in said event;
 - e) the identity of all persons who have knowledge, information or belief about the act;
 - f) when the act, event or omission first became known; and
 - g) the circumstances and manner in which such knowledge was first obtained.

C. “Referring or relating to” means comprising, relating to, pertaining to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

D. To the extent that Applicant has any objection to answering any of the RFAs or producing responsive documents on the basis that the requested information or responsive documents are privileged or otherwise protected by the attorney-client privilege or work-product immunity, Applicant is requested to identify the subject matter and date of the information or document; identify the person who authored the information or documents; identify each person who ever received or had access to the information or document, or a copy thereof; identify the person or persons who presently have custody of the information or document; and state the basis of the alleged privilege or work-product immunity.

E. If Applicant is aware, with respect to any Interrogatory, or any Request listed in Opposer's First Request for Production of Documents served herewith, or any subsequent Interrogatory or Document Request that may be served on Applicant in this proceeding, that any responsive document once existed but has been destroyed, please identify the document, who destroyed it, why it was destroyed, and the date and circumstances under which it was destroyed.

F. Each matter of which an admission is requested will be deemed admitted pursuant to Federal Rule of Civil Procedure 36(a) unless a written answer or objection is served within 30 days of service of these requests.

G. All objections to individual requests for admission shall specifically state the reasons for the objections.

H. Answers to individual requests for admission shall specifically admit the matter, specifically deny the matter, or set forth in detail the reasons why the matter cannot be truthfully admitted or denied.

I. When good faith requires that you qualify your answer or deny only part of the matter for which an admission is requested, you must specify those portions of the request which you admit, and qualify or deny the remainder.

J. You may not give lack of information or knowledge as a reason for failure to admit or deny a particular request for admission unless you have made reasonable inquiry into the matter which is the subject of the request for admission and unless the information known or readily available to you is insufficient to enable you to admit or deny the matter and your answer so states.

K. If you believe that a matter for which an admission is requested presents a genuine issue for trial, you may not, on that ground alone, object to that request for admission.

L. With respect to each written response to these requests for admission, please restate each request immediately before your written response to that request.

M. Opposer incorporates herein by reference the definitions set forth in *Opposer's First Set of Interrogatories*.

REQUESTS FOR ADMISSION

1. Admit that the term "GEOSPEC" is not found in a dictionary.
2. Admit that Opposer provides construction related goods under Opposer's Mark.
3. Admit that you have no knowledge that the mark GEOSPEC is used in association with any good and/or services other than the goods and services provided by Opposer.
4. Admit that Opposer has used Opposer's Mark for over four years in association with construction related goods.
5. Admit that the term "GEOSPEC" has no common meaning in the English language.
6. Admit that Applicant is providing or intends to provide construction related goods under Applicant's Marks.
7. Admit that the term "GEOSPEC" has no meaning other than as trademark used by Opposer in association with the goods and services provided by Opposer.
8. Admit that the filing dates of the federal trademark applications for Opposer's Mark and the registration dates based on those applications predate the filing date of U.S. Trademark Application Serial Nos. 79/023,934 and 79/023,935 for Applicant's Marks.

9. Admit that Opposer's Mark is used in association with construction related goods in the United States.

10. Admit that the public has come to associate Opposer's Mark as a source of high quality construction related goods.

11. Admit that you are not aware of anyone other than Opposer who uses the mark "GEOSPEC."

12. Admit that there are no federal trademark registrations for the term "GEOSPEC" other than that owned by Opposer.

13. Admit that Opposer has not in any way authorized Applicant's use of Opposer's Mark for the goods set forth in U.S. Trademark Application Serial Nos. 79/023,934 and 79/023,935.

14. Admit that consumers of Applicant's Goods and Services are consumers of construction related materials.

15. Admit that "GEOSPEC" is a unique word and not a common word.

16. Admit that Opposer's Mark is distinctive.

17. Admit that the construction related goods provided by Opposer and the construction related goods intended to be provided by Applicant will be provided to persons or entities in the same industry.


18. Admit that the word portions of all of Applicant's Marks and Opposer's Mark begin with "GEOSPEC."

19. Admit that the construction related goods provided by Opposer and the construction related goods provided by, or that are intended to be provided by, Applicant are provided to consumers through the same channels of trade.

20. Admit that Applicant provides or intends to provide construction related goods under Applicant's Marks.

Dated: September 2, 2008

TOWNSEND AND TOWNSEND AND CREW LLP

A handwritten signature in black ink, appearing to read "Shelley B. Mixon", is written over a horizontal line.

David E. Sipiora

Shelley B. Mixon

1200 Seventeenth Street, Suite 2700

Denver, CO 80202

(303) 571-4000

(303) 571-4321 (fax)

Attorneys for Opposer Plasti-Fab Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2008, a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION** was served by placing the same in the United States mail, postage prepaid and addressed to the following:

Bassam N. Ibrahim
Bryce J. Maynard
Buchanan Ingersoll PC
1737 King Street
Suite 500
Alexandria, VA 22314-2727

Attorneys for Applicant Kobelco Construction Machinery Co., Ltd.

Aniz M. Oliver

EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial Nos. 79/023,935 and 79/023,934

Published: August 7, 2007

Applicant: Kobelco Construction Machinery Co., Ltd.

Mark: GEOSPEC and ACERA GEOSPEC (and design)

Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

vs.

KOBELCO CONSTRUCTION MACHINERY
CO., LTD,

Applicant.

Opposition No. 91179480 (parent)
Opposition No. 91179482

OPPOSER'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS (1-28)

Opposer Plasti-Fab Ltd. ("Opposer"), by counsel, requests that Applicant Kobelco Construction Machinery Co., Ltd. ("Applicant") produce for inspection and copying the documents listed below, at the offices of Applicant's counsel, Townsend and Townsend and Crew LLP, 1200 Seventeenth Street, Suite 2700, Denver, Colorado 80202, within thirty (30) days of the date of service hereof, or at such other time and place as may be mutually agreed upon by the parties, in accordance with Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 34 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

- A. Opposer hereby incorporates by reference the Instructions and Definitions set forth in Opposer's First Set of Interrogatories (Nos. 1-29).
- B. If Applicant is aware, with respect to any Request, that any responsive document once existed but has been destroyed, Applicant should describe the document, identify who destroyed it, why it was destroyed, and the date and circumstances under which it was destroyed.
- C. The term "concerning" means referring to, relating to, containing, embodying, mentioning, evidencing, constituting or describing.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1

All documents that Applicant was required to identify or did identify in its response to Opposer's First Set of Interrogatories to Applicant.

REQUEST NO. 2

All documents evidencing the transfer, assignment or licensing of Applicant's Marks, or use of Applicant's Marks as security or collateral, from the date of first adoption and use of Applicant's Marks to the present.

REQUEST NO. 3

All documents on which Applicant intends to rely in this Opposition proceeding, including, but not limited to, all exhibits and documents Applicant may use for impeachment.

REQUEST NO. 4

All documents concerning the acquisition, selection, availability, adoption, creation, design, proposal to use or attempt to register Applicant's Marks, including, but not limited to, documents concerning any investigation to determine the availability of Applicant's Marks.

REQUEST NO. 5

Representative documents showing the manner in which Applicant's Marks have been displayed or used, including, but not limited to, advertisements, product packaging, signs, brochures, posters, stationary, business cards, promotional materials, contracts, decals, labels, badges, mail order solicitations, billing and order forms, computer software, pages or sites on the Internet's world wide web, and computer screens or screen printouts.

REQUEST NO. 6

Documents sufficient to show the formation or organizational structure of Applicant's business and any predecessor-in-interest that owned Applicant's Marks, including, but not limited to, articles of incorporation or articles of organization and any amendments thereto, and any written operating agreements and amendments thereto.

REQUEST NO. 7

Documents sufficient to explain or describe Applicant's Goods and Services, including, but not limited to, advertisements, brochures, fliers, sales tools, catalogs, order forms, price lists, training materials, memoranda and bulletins.

REQUEST NO. 8

All documents concerning any searches, studies, distinctiveness surveys, likelihood of confusion surveys, market studies, focus group studies or other surveys or studies performed by

or for Applicant in connection with the availability, selection, creation, acquisition, evaluation of strength or weakness, valuation, protection or defense of Applicant's Marks.

REQUEST NO. 9

Documents sufficient to describe the geographic scope of the use of Applicant's Marks.

REQUEST NO. 10

All documents concerning the first use of Applicant's Marks (a) in commerce and (b) in interstate commerce, including, but not limited to, representative documents depicting such use of Applicant's Marks, the date and location of such use, and the identities of all Persons with knowledge of such use.

REQUEST NO. 11

All documents concerning any state or federal trademark registration or application to register Applicant's Marks.

REQUEST NO. 12

Representative documents showing any state or county corporate, partnership, company name or assumed name filing by Applicant that incorporates "GEOSPEC."

REQUEST NO. 13

All documents concerning any policy relating to the use, display, or promotion of Applicant's Marks or the goods or services offered under Applicant's Marks.

REQUEST NO. 14

All documents from or to any advertising or other outside agency or service used in developing or placing advertisements for Applicant's Goods or Services.

REQUEST NO. 15

All documents evidencing the ownership or a right to use Applicant's Marks, including without limitation partnership agreements, distributor agreements, marketing agreements, assignments, licenses, security agreements, settlements, consent agreements, or any other form of agreement, whether pertaining to Applicant, any predecessor-in-interest, or any other party.

REQUEST NO. 16

All documents concerning any instance of misdirected (i) mail, (ii) email, (iii) telephone calls or (iv) other communications or inquiries, including via the Internet, or other instances wherein any person may have been confused or mistaken regarding the source of the goods or services associated with the Applicant's Marks, Opposer's Mark, or any mark substantially similar to either.

REQUEST NO. 17

Documents sufficient to show the amount of revenue received by Applicant (a) for all of Applicant's Goods and Services and (b) for each different type of such good or service on an annual basis, for each year since Applicant's Marks were first used.

REQUEST NO. 18

Documents sufficient to show the dollar amount of advertising and promotional expenditures, on an annual basis, for each year since Applicant's Marks were first used, (a) for all of Applicant's Goods and Services and (b) for each particular such good or service, including, but not limited to, construction related products and services.

REQUEST NO. 19

Documents sufficient to show the publication of Applicant's Marks in any media, whether such media is electronic (*e.g.*, Internet) or conventional (*e.g.*, paper), including, but not limited to, publications at tradeshow, magazines, and trade journals.

REQUEST NO. 20

Documents sufficient to show any periods of non-use of Applicant's Marks in connection with any of Applicant's Goods and Services, from the date of first use to the present.

REQUEST NO. 21

Documents sufficient to show any resumption of use of Applicant's Marks that followed any period of nonuse identified in the documents responsive to Request No. 20.

REQUEST NO. 22

Documents sufficient to show any third-party use, application or registration of a trade name, trademark or service mark incorporating "GEOSPEC" or a term similar thereto for the time period from May 6, 2004, to the present.

REQUEST NO. 23

All documents concerning any objection, challenge, proceeding, dispute or litigation between Applicant (or any predecessor-in-interest) and any third party concerning a mark containing the element "GEOSPEC."

REQUEST NO. 24

Documents sufficient to show Applicant's past, present and future marketing plans for Applicant's Goods and Services.

REQUEST NO. 25

All documents concerning Opposer or Opposer's use of Opposer's Mark including, but not limited to, documents reflecting the date or circumstances of Applicant's first awareness of (i) Opposer and (ii) Opposer's Mark.

REQUEST NO. 26

All documents relied upon as a basis for each opinion by all experts whom Applicant intends to call as witnesses in this action, or from whom Applicant has obtained or may obtain any statements, affidavits or declarations relevant to this action.

REQUEST NO. 27

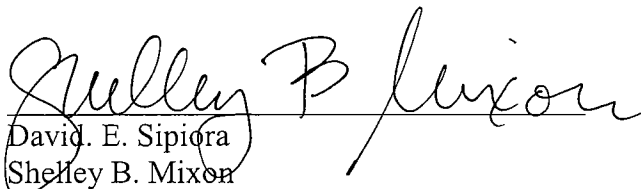
Documents sufficient to show or describe the potential or actual customers or end-users of Applicant's Goods and Services.

REQUEST NO. 28

Documents sufficient to show the channels of distribution of Applicant's Goods or Services.

Dated: September 2, 2008

TOWNSEND AND TOWNSEND AND CREW LLP

A handwritten signature in black ink, appearing to read "Shelley B. Mixon", is written over a horizontal line.

David E. Sipiora
Shelley B. Mixon

1200 Seventeenth Street, Suite 2700
Denver, CO 80202
(303) 571-4000
(303) 571-4321 (fax)

Attorneys for Opposer Plasti-Fab Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2008, a true and correct copy of the foregoing **APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (1-28)** was served by placing the same in the United States mail, postage prepaid and addressed to the following:

Bassam N. Ibrahim
Bryce J. Maynard
Buchanan Ingersoll PC
1737 King Street
Suite 500
Alexandria, VA 22314-2727

Attorneys for Applicant Kobelco Construction Machinery Co., Ltd.

Caruz M. Ocuru

EXHIBIT C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial Nos. 79/023,935 and 79/023,934

Published: August 7, 2007

Applicant: Kobelco Construction Machinery Co., Ltd.

Mark: GEOSPEC and ACERA GEOSPEC (and design)

Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

vs.

KOBELCO CONSTRUCTION
MACHINERY CO., LTD,

Applicant.

Opposition No. 91179480 (parent)
Opposition No. 91179482

OPPOSER'S FIRST SET OF INTERROGATORIES (Nos. 1-29)

Opposer Plasti-Fab Ltd. ("Opposer") propounds the following written interrogatories ("Interrogatories") to be fully and separately answered in writing, under oath, by an officer or duly authorized agent of Kobelco Construction Machinery Co., LTD ("Applicant"), within thirty (30) days of the date of service hereof, or at such other time and place as may be mutually agreed upon by the parties, in accordance with Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 33 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

A. These Interrogatories seek answers as of the date on which Applicant responds and, as to those Interrogatories addressed to matters falling within Rules 26(e)(1) and (2) of the Federal Rules of Civil Procedure, shall be deemed to be continuing, requiring Applicant to serve upon Opposer such further answers promptly after Applicant has acquired additional knowledge or information relating in any way to those interrogatories.

B. Where the interrogatories request the identity of:

1. a person, state the name and current or last known address of each person, employer or business affiliation, and occupation and business position held;
2. a company, state the name, place of incorporation or organization, principal place of business, and the identity of the persons having knowledge of the matter with respect to which the company is named;
3. a document, state:
 - a) the identity of the person or persons who prepared it, the sender and recipient, if any;
 - b) the title or a description of the general nature of its subject matter;
 - c) the date of preparation;
 - d) the date and manner of distribution and publication, if any;
 - e) the location of each copy and the identity of the present custodian;
 - f) the identity of the person or persons who can identify it;
 - g) the contents of the document verbatim (or, in lieu thereof, a copy of the document); and

- h) if privilege is claimed, the specific basis for the claim;
- 4. an act or event, state:
 - a) a description of the act or event;
 - b) when it occurred;
 - c) where it occurred;
 - d) the identity of the person or persons performing said act (or, in case of an omission, the identity of the person or persons failing to act) or involved in said event;
 - e) the identity of all persons who have knowledge, information or belief about the act;
 - f) when the act, event or omission first became known; and
 - g) the circumstances and manner in which such knowledge was first obtained.

C. To the extent that Applicant has any objection to answering any of the Interrogatories or producing responsive documents on the basis that the requested information or responsive documents are privileged or otherwise protected by the attorney-client privilege or work-product immunity, Applicant is requested to identify the subject matter and date of the information or document; identify the person who authored the information or documents; identify each person who ever received or had access to the information or document, or a copy thereof; identify the person or persons who presently have custody of the information or document; and state the basis of the alleged privilege or work-product immunity.

D. The term “document” encompasses all items subject to discovery within the scope of Rule 34 of the Federal Rules of Civil Procedure and includes, without limitation, the following items, whether printed, or recorded, or filmed, or reproduced by any process, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and whether original, master or copy; whether printed or stored on any medium, including audiotape, videotape, CD-ROM, CD-RW, floppy disk, zip disk, hard disk, memory chip, servers, or via any other electronic or magnetic means of storage, including without limitation: agreements; communications, including intra-company communications and correspondence; electronic mail, voice mail, faxes, cablegrams, radio-grams and telegrams; notes and memoranda; summaries, minutes and records of telephone conversations, meetings and conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations or interviews; books, manuals, publications and diaries; laboratory and engineering reports and notebooks; charts; plans; sketches and drawings; photographs; reports and/or summaries of investigations and/or surveys; opinions and reports of consultants; opinions of counsel; reports and summaries of negotiations; brochures; pamphlets, catalogs and catalog sheets; advertisements, including storyboard and/or scripts for radio or television commercials; circulars; trade letters; press publicity and trade and product releases; drafts of original or preliminary notes on, and marginal comments appearing on, any document; and any other information-containing paper, writing or physical thing; letters, notes, memoranda, records, minutes, bills, contracts, agreements, orders, receipts, drawings, sketches, advertising or promotional literature, operating manuals, instruction bulletins, test data, and reports, and each version thereof.

E. “Referring or relating to” means comprising, concerning, relating to, pertaining to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

F. “Communication(s)” when used in these Interrogatories includes the disclosure, transfer, or exchange of information by any means, written, verbal, electronic, or otherwise.

G. “And,” or “or” or “and/or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

H. “Date” means the exact day, month, and year, if ascertainable and, if not, Applicant's best approximation thereof.

I. “Applicant” means Kobelco Construction Machinery Co., LTD., all predecessors or successors-in-interest, all predecessor or successor owners of U.S. Trademark Application Serial Nos. 79/023,935 and 79/023,934 and/or Applicant’s Marks, as defined in paragraph K below, and the officers, employees, attorneys, agents, consultants and representatives of all such entities. Absent contrary express notice, it is understood and anticipated that all answers and responses to these Interrogatories and to Opposer’s First Request for Production of Documents will include information and documents from and pertaining to all such predecessor and successor entities.

J. “Person(s)” means both natural persons, living or deceased, and to corporate or other business entities, whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of a corporate or other business entity “person’s” directors, officers, members, employees, representatives, agents, and attorneys.

K. “Applicant's Marks” or the “Marks” means the marks which are the subject matter of U.S. Trademark Application Serial Nos. 79/023,935 and 79/023,934 whether used as a trademark, service mark, trade name, or corporate name, either alone or in association with other words or designs.

L. “Opposer's Mark” means the mark which is the subject of U.S. Trademark Registration No. 3,385,301.

M. “Applicant’s Goods and Services” means the goods and services identified by Applicant in response to Interrogatory No. 1.

INTERROGATORIES

INTERROGATORY NO. 1

Identify and describe all of the goods and/or services Applicant has sold, is currently selling, or intends to sell, under Applicant’s Marks. The identified goods and services shall hereinafter be referred to as “Applicant’s Goods and Services.”

INTERROGATORY NO. 2

Identify all Persons affiliated with Applicant who have any knowledge concerning the following issues:

- (a) the adoption of Applicant’s Marks;
- (b) Applicant’s knowledge of Opposer’s Mark;
- (c) the sale of Applicant’s Goods and Services;
- (d) the advertising of Applicant’s Goods and Services;
- (e) the trade channels through which Applicant’s Goods and Services travel;
- (f) any actual confusion between Applicant’s Marks and Opposer’s Mark;

- (g) the alleged likelihood of confusion between Applicant's Marks and Opposer's Mark.

INTERROGATORY NO. 3

State the date when Applicant first became aware of Opposer's Mark, and identify all facts relating thereto.

INTERROGATORY NO. 4

Describe all facts relating to the adoption of Applicant's Marks by Applicant.

INTERROGATORY NO. 5

To the extent Applicant claims to have acquired any rights in Applicant's Marks through any predecessor-in-interest, describe the facts pertaining to said acquisition.

INTERROGATORY NO. 6

Describe with particularity any searches or surveys performed on Applicant's behalf in connection with the Applicant's Marks or Opposer's Mark.

INTERROGATORY NO. 7

Describe with particularity the date and circumstances of first use of Applicant's Marks in connection with Applicant's Goods and Services (a) in commerce of any sort and (b) in interstate commerce.

INTERROGATORY NO. 8

Identify all federal and state trademark registration(s) or application(s) filed and/or obtained on behalf of Applicant for marks that include "GEOSPEC" and describe in detail the status of each application or registration.

INTERROGATORY NO. 9

Describe any policy Applicant has regarding the use of Applicant's Marks.

INTERROGATORY NO. 11

Describe all instances of actual confusion between Applicant's Marks and Opposer's Mark.

INTERROGATORY NO. 12

Identify, on an annual basis for each year since Applicant's Marks were first used, the amount of revenue received by Applicant for each of Applicant's Goods and Services.

INTERROGATORY NO. 13

Identify, on an annual basis for each year since Applicant's Marks were first used, the dollar amount of advertising and promotional expenditures for each of Applicant's Goods and Services.

INTERROGATORY NO. 14

Identify all advertising methods used by Applicant in advertising Applicant's Goods and Services.

INTERROGATORY NO. 15

Identify all web sites that are operated on behalf of Applicant that display or use Applicant's Marks in any way.

INTERROGATORY NO. 16

Identify the geographical areas, by city, county, region and state as applicable, in which Applicant's Goods and Services are currently being offered for sale under Applicant's Marks

and, for each area, identify all such goods or services and the date on which they were first offered for sale.

INTERROGATORY NO. 17

Describe the channels of trade through which Applicant offers Applicant's Goods and Services.

INTERROGATORY NO. 18

Identify at least ten (10) representative customers to whom Applicant has sold Applicant's Goods and Services, including one or more representatives of each class of customers to whom Applicant markets or offers Applicant's Goods and Services.

INTERROGATORY NO. 19

Describe in detail the facts relating to any periods of non-use of Applicant's Marks in connection with any of Applicant's Goods and Services.

INTERROGATORY NO. 20

Identify and explain in detail any formal or informal objections that Applicant has ever received in connection with its use of Applicant's Marks.

INTERROGATORY NO. 21

Describe all oral or written agreements entered into by Applicant referring or relating to Applicant's Marks, including without limitation, partnerships, distributorships, marketing agreements, assignments, licenses, security agreements, or agreements settling disputes.

INTERROGATORY NO. 22

Identify all experts with whom Applicant has consulted or who Applicant intends to call as witnesses in this action and state the subject matter on which each expert is expected to testify.

INTERROGATORY NO. 23

Identify all fact or percipient witnesses who Applicant may call or will call in this action, and state the subject matter on which each individual is expected to testify.

INTERROGATORY NO. 24

Identify any instances in which Applicant's Goods and Services were offered for sale in the same trade channel as goods and services sold under Opposer's Mark.

INTERROGATORY NO. 25

Identify all other uses of which Applicant is aware of the term "GEOSPEC" by any third party in relation to goods and services used in the construction industry for the time period from May 6, 2004 to the present.

INTERROGATORY NO. 26

Identify each instance in which Applicant has asserted that a third party's use of any mark incorporating the element "GEOSPEC" is likely to result in confusion as to the source of the goods or services offered by that party and any of Applicant's Goods and Services.

INTERROGATORY NO. 27

Identify each instance in which Applicant has asserted that a third party's use of any mark incorporating the element "GEOSPEC" is likely to dilute or has diluted Applicant's Marks.

INTERROGATORY NO. 28

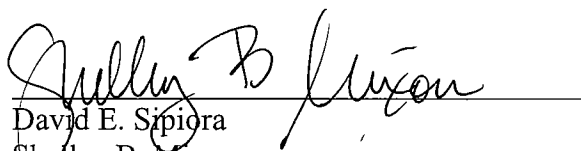
Identify all lawsuits or administrative proceedings, if any, past or present, regarding Opposer's Marks.

INTERROGATORY NO. 29

Identify all facts that Applicant believes supports Applicant's contention in paragraph 1 of the "Affirmative Defenses" section of Applicant's answers to Opposer's Notice of Opposition that there is no likelihood of confusion between Opposer's Mark and Applicant's Marks.

Dated: September 2, 2008

TOWNSEND AND TOWNSEND AND CREW LLP


David E. Sipiora
Shelley B. Mixon
1200 Seventeenth Street, Suite 2700
Denver, CO 80202
(303) 571-4000
(303) 571-4321 (fax)

Attorneys for Opposer Plasti-Fab LTD.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2008, a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES (Nos. 1-29)** was served by placing the same in the United States mail, postage prepaid and addressed to the following:

Bassam N. Ibrahim
Bryce J. Maynard
Buchanan Ingersoll PC
1737 King Street
Suite 500
Alexandria, VA 22314-2727

Attorneys for Applicant Kobelco Construction Machinery Co., Ltd.



EXHIBIT D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re: *Application Ser. Nos. 79/023,935 and 79/023,934*
Published: August 7, 2007, in the Official Gazette
Applicant: Kobelco Construction Machinery Co., Ltd.
Mark: **GEOSPEC and ACERA GEOSPEC (and design)**
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

vs.

KOBELCO CONSTRUCTION
MACHINERY CO., LTD.,

Applicant.

Consolidated Opposition Nos.
91179480 (parent) and 91179842

OPPOSER'S MOTION TO COMPEL

Opposer Plasti-Fab Ltd. ("Opposer") hereby submits the following Motion to Compel production of documents responsive to Request for Production Nos. 1-28, answers to Interrogatory Nos. 1-29 and answers to Requests for Admission Nos. 1-20 against Applicant Kobelco Construction Machinery Co., Ltd. ("Kobelco").

Opposer served its First Set of Requests for Admission, Requests for Production of Documents and Interrogatories on September 2, 2008. Copies of Opposer's discovery requests are attached as Exhibits A-C. 37 C.F.R. § 2.120(e); Trademark Trial and Appeal Board Manual of Procedure ("T.B.M.P.") § 523.02. On October 7, 2008, Kobelco filed a motion for a 30-day extension to respond to Opposer's discovery requests. If the TTAB grants this motion, Kobelco's discovery responses will be due November 6, 2008. Kobelco did not consent with

Opposer prior to filing its motion, and if Kobelco had, Opposer would have worked with Kobelco to provide an appropriate extension of time to respond to Opposer's discovery requests. Regardless, Opposer does not object to Kobelco's extension request and expects that the request will be granted.

Opposer's testimony period, however, opens October 29, 2008. As such, Opposer's deadline for filing any motion to compel is October 28, 2008. 37 C.F.R. § 2.120(e) ("[t]he motion must be filed prior to the commencement of the first testimony period."); T.B.M.P. § 523.03. To date, Opposer has received no discovery responses from Kobelco, although Kobelco has shown every intention of responding to Opposer's discovery requests. Given the imminent opening of the testimony period, Opposer files this Motion to Compel in order to protect its rights. Thus, Opposer respectfully moves this Board for an order compelling full responses to all of Opposer's discovery requests. 37 C.F.R. § 2.120(e); T.B.M.P. § 523.01.

Opposer advised Kobelco by e-mail of the foregoing. Attached as Exhibit D is a copy of such e-mail. Opposer will promptly notify the Board if Kobelco complies with its discovery obligations in the interim.

Respectfully submitted,

TOWNSEND AND TOWNSEND AND CREW LLP

Date: October 28, 2008

By: /David E. Sipiora/
David E. Sipiora
Shelley B. Mixon
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2008, I served the foregoing **OPPOSER'S**
MOTION TO COMPEL on counsel for Applicant by depositing a true and correct copy of the
same with the United States Postal Service, first class mail, postage prepaid, in an envelope
addressed to:

Bassam N. Ibrahim
Buchanan Ingersoll & Rooney PC
1737 King Street, Suite 500
Alexandria, Virginia 22314-2727

/Amanda L. Swaim/

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial Nos. 79/023,935 and 79/023,934
Published: August 7, 2007
Applicant: Kobelco Construction Machinery Co., Ltd.
Mark: GEOSPEC and ACERA GEOSPEC (and design)
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

vs.

KOBELCO CONSTRUCTION MACHINERY
CO., LTD,

Applicant.

Opposition No. 91179480 (parent)
Opposition No. 91179482

OPPOSER'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS (1-28)

Opposer Plasti-Fab Ltd. ("Opposer"), by counsel, requests that Applicant Kobelco Construction Machinery Co., Ltd. ("Applicant") produce for inspection and copying the documents listed below, at the offices of Applicant's counsel, Townsend and Townsend and Crew LLP, 1200 Seventeenth Street, Suite 2700, Denver, Colorado 80202, within thirty (30) days of the date of service hereof, or at such other time and place as may be mutually agreed upon by the parties, in accordance with Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 34 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

A. Opposer hereby incorporates by reference the Instructions and Definitions set forth in Opposer's First Set of Interrogatories (Nos. 1-29).

B. If Applicant is aware, with respect to any Request, that any responsive document once existed but has been destroyed, Applicant should describe the document, identify who destroyed it, why it was destroyed, and the date and circumstances under which it was destroyed.

C. The term "concerning" means referring to, relating to, containing, embodying, mentioning, evidencing, constituting or describing.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1

All documents that Applicant was required to identify or did identify in its response to Opposer's First Set of Interrogatories to Applicant.

REQUEST NO. 2

All documents evidencing the transfer, assignment or licensing of Applicant's Marks, or use of Applicant's Marks as security or collateral, from the date of first adoption and use of Applicant's Marks to the present.

REQUEST NO. 3

All documents on which Applicant intends to rely in this Opposition proceeding, including, but not limited to, all exhibits and documents Applicant may use for impeachment.

REQUEST NO. 4

All documents concerning the acquisition, selection, availability, adoption, creation, design, proposal to use or attempt to register Applicant's Marks, including, but not limited to, documents concerning any investigation to determine the availability of Applicant's Marks.

REQUEST NO. 5

Representative documents showing the manner in which Applicant's Marks have been displayed or used, including, but not limited to, advertisements, product packaging, signs, brochures, posters, stationary, business cards, promotional materials, contracts, decals, labels, badges, mail order solicitations, billing and order forms, computer software, pages or sites on the Internet's world wide web, and computer screens or screen printouts.

REQUEST NO. 6

Documents sufficient to show the formation or organizational structure of Applicant's business and any predecessor-in-interest that owned Applicant's Marks, including, but not limited to, articles of incorporation or articles of organization and any amendments thereto, and any written operating agreements and amendments thereto.

REQUEST NO. 7

Documents sufficient to explain or describe Applicant's Goods and Services, including, but not limited to, advertisements, brochures, fliers, sales tools, catalogs, order forms, price lists, training materials, memoranda and bulletins.

REQUEST NO. 8

All documents concerning any searches, studies, distinctiveness surveys, likelihood of confusion surveys, market studies, focus group studies or other surveys or studies performed by

or for Applicant in connection with the availability, selection, creation, acquisition, evaluation of strength or weakness, valuation, protection or defense of Applicant's Marks.

REQUEST NO. 9

Documents sufficient to describe the geographic scope of the use of Applicant's Marks.

REQUEST NO. 10

All documents concerning the first use of Applicant's Marks (a) in commerce and (b) in interstate commerce, including, but not limited to, representative documents depicting such use of Applicant's Marks, the date and location of such use, and the identities of all Persons with knowledge of such use.

REQUEST NO. 11

All documents concerning any state or federal trademark registration or application to register Applicant's Marks.

REQUEST NO. 12

Representative documents showing any state or county corporate, partnership, company name or assumed name filing by Applicant that incorporates "GEOSPEC."

REQUEST NO. 13

All documents concerning any policy relating to the use, display, or promotion of Applicant's Marks or the goods or services offered under Applicant's Marks.

REQUEST NO. 14

All documents from or to any advertising or other outside agency or service used in developing or placing advertisements for Applicant's Goods or Services.

REQUEST NO. 15

All documents evidencing the ownership or a right to use Applicant's Marks, including without limitation partnership agreements, distributor agreements, marketing agreements, assignments, licenses, security agreements, settlements, consent agreements, or any other form of agreement, whether pertaining to Applicant, any predecessor-in-interest, or any other party.

REQUEST NO. 16

All documents concerning any instance of misdirected (i) mail, (ii) email, (iii) telephone calls or (iv) other communications or inquiries, including via the Internet, or other instances wherein any person may have been confused or mistaken regarding the source of the goods or services associated with the Applicant's Marks, Opposer's Mark, or any mark substantially similar to either.

REQUEST NO. 17

Documents sufficient to show the amount of revenue received by Applicant (a) for all of Applicant's Goods and Services and (b) for each different type of such good or service on an annual basis, for each year since Applicant's Marks were first used.

REQUEST NO. 18

Documents sufficient to show the dollar amount of advertising and promotional expenditures, on an annual basis, for each year since Applicant's Marks were first used, (a) for all of Applicant's Goods and Services and (b) for each particular such good or service, including, but not limited to, construction related products and services.

REQUEST NO. 19

Documents sufficient to show the publication of Applicant's Marks in any media, whether such media is electronic (*e.g.*, Internet) or conventional (*e.g.*, paper), including, but not limited to, publications at tradeshow, magazines, and trade journals.

REQUEST NO. 20

Documents sufficient to show any periods of non-use of Applicant's Marks in connection with any of Applicant's Goods and Services, from the date of first use to the present.

REQUEST NO. 21

Documents sufficient to show any resumption of use of Applicant's Marks that followed any period of nonuse identified in the documents responsive to Request No. 20.

REQUEST NO. 22

Documents sufficient to show any third-party use, application or registration of a trade name, trademark or service mark incorporating "GEOSPEC" or a term similar thereto for the time period from May 6, 2004, to the present.

REQUEST NO. 23

All documents concerning any objection, challenge, proceeding, dispute or litigation between Applicant (or any predecessor-in-interest) and any third party concerning a mark containing the element "GEOSPEC."

REQUEST NO. 24

Documents sufficient to show Applicant's past, present and future marketing plans for Applicant's Goods and Services.

REQUEST NO. 25

All documents concerning Opposer or Opposer's use of Opposer's Mark including, but not limited to, documents reflecting the date or circumstances of Applicant's first awareness of (i) Opposer and (ii) Opposer's Mark.

REQUEST NO. 26

All documents relied upon as a basis for each opinion by all experts whom Applicant intends to call as witnesses in this action, or from whom Applicant has obtained or may obtain any statements, affidavits or declarations relevant to this action.

REQUEST NO. 27

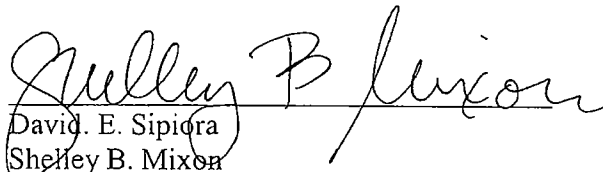
Documents sufficient to show or describe the potential or actual customers or end-users of Applicant's Goods and Services.

REQUEST NO. 28

Documents sufficient to show the channels of distribution of Applicant's Goods or Services.

Dated: September 2, 2008

TOWNSEND AND TOWNSEND AND CREW LLP

A handwritten signature in black ink, appearing to read "Shelley B. Mixon", is written over a horizontal line.

David. E. Sipiora

Shelley B. Mixon

1200 Seventeenth Street, Suite 2700

Denver, CO 80202

(303) 571-4000

(303) 571-4321 (fax)

Attorneys for Opposer Plasti-Fab Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2008, a true and correct copy of the foregoing **APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (1-28)** was served by placing the same in the United States mail, postage prepaid and addressed to the following:

Bassam N. Ibrahim
Bryce J. Maynard
Buchanan Ingersoll PC
1737 King Street
Suite 500
Alexandria, VA 22314-2727

Attorneys for Applicant Kobelco Construction Machinery Co., Ltd.

Caruz M. Ocuru

61463003 v3

EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial Nos. 79/023,935 and 79/023,934
Published: August 7, 2007
Applicant: Kobelco Construction Machinery Co., Ltd.
Mark: GEOSPEC and ACERA GEOSPEC (and design)
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

vs.

KOBELCO CONSTRUCTION
MACHINERY CO., LTD,

Applicant.

Opposition No. 91179480 (parent)
Opposition No. 91179482

OPPOSER'S FIRST SET OF INTERROGATORIES (Nos. 1-29)

Opposer Plasti-Fab Ltd. ("Opposer") propounds the following written interrogatories ("Interrogatories") to be fully and separately answered in writing, under oath, by an officer or duly authorized agent of Kobelco Construction Machinery Co., LTD ("Applicant"), within thirty (30) days of the date of service hereof, or at such other time and place as may be mutually agreed upon by the parties, in accordance with Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 33 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

A. These Interrogatories seek answers as of the date on which Applicant responds and, as to those Interrogatories addressed to matters falling within Rules 26(e)(1) and (2) of the Federal Rules of Civil Procedure, shall be deemed to be continuing, requiring Applicant to serve upon Opposer such further answers promptly after Applicant has acquired additional knowledge or information relating in any way to those interrogatories.

B. Where the interrogatories request the identity of:

1. a person, state the name and current or last known address of each person, employer or business affiliation, and occupation and business position held;
2. a company, state the name, place of incorporation or organization, principal place of business, and the identity of the persons having knowledge of the matter with respect to which the company is named;
3. a document, state:
 - a) the identity of the person or persons who prepared it, the sender and recipient, if any;
 - b) the title or a description of the general nature of its subject matter;
 - c) the date of preparation;
 - d) the date and manner of distribution and publication, if any;
 - e) the location of each copy and the identity of the present custodian;
 - f) the identity of the person or persons who can identify it;
 - g) the contents of the document verbatim (or, in lieu thereof, a copy of the document); and

- h) if privilege is claimed, the specific basis for the claim;
- 4. an act or event, state:
 - a) a description of the act or event;
 - b) when it occurred;
 - c) where it occurred;
 - d) the identity of the person or persons performing said act (or, in case of an omission, the identity of the person or persons failing to act) or involved in said event;
 - e) the identity of all persons who have knowledge, information or belief about the act;
 - f) when the act, event or omission first became known; and
 - g) the circumstances and manner in which such knowledge was first obtained.

C. To the extent that Applicant has any objection to answering any of the Interrogatories or producing responsive documents on the basis that the requested information or responsive documents are privileged or otherwise protected by the attorney-client privilege or work-product immunity, Applicant is requested to identify the subject matter and date of the information or document; identify the person who authored the information or documents; identify each person who ever received or had access to the information or document, or a copy thereof; identify the person or persons who presently have custody of the information or document; and state the basis of the alleged privilege or work-product immunity.

D. The term “document” encompasses all items subject to discovery within the scope of Rule 34 of the Federal Rules of Civil Procedure and includes, without limitation, the following items, whether printed, or recorded, or filmed, or reproduced by any process, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and whether original, master or copy; whether printed or stored on any medium, including audiotape, videotape, CD-ROM, CD-RW, floppy disk, zip disk, hard disk, memory chip, servers, or via any other electronic or magnetic means of storage, including without limitation: agreements; communications, including intra-company communications and correspondence; electronic mail, voice mail, faxes, cablegrams, radio-grams and telegrams; notes and memoranda; summaries, minutes and records of telephone conversations, meetings and conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations or interviews; books, manuals, publications and diaries; laboratory and engineering reports and notebooks; charts; plans; sketches and drawings; photographs; reports and/or summaries of investigations and/or surveys; opinions and reports of consultants; opinions of counsel; reports and summaries of negotiations; brochures; pamphlets, catalogs and catalog sheets; advertisements, including storyboard and/or scripts for radio or television commercials; circulars; trade letters; press publicity and trade and product releases; drafts of original or preliminary notes on, and marginal comments appearing on, any document; and any other information-containing paper, writing or physical thing; letters, notes, memoranda, records, minutes, bills, contracts, agreements, orders, receipts, drawings, sketches, advertising or promotional literature, operating manuals, instruction bulletins, test data, and reports, and each version thereof.

E. "Referring or relating to" means comprising, concerning, relating to, pertaining to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

F. "Communication(s)" when used in these Interrogatories includes the disclosure, transfer, or exchange of information by any means, written, verbal, electronic, or otherwise.

G. "And," or "or" or "and/or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

H. "Date" means the exact day, month, and year, if ascertainable and, if not, Applicant's best approximation thereof.

I. "Applicant" means Kobelco Construction Machinery Co., LTD., all predecessors or successors-in-interest, all predecessor or successor owners of U.S. Trademark Application Serial Nos. 79/023,935 and 79/023,934 and/or Applicant's Marks, as defined in paragraph K below, and the officers, employees, attorneys, agents, consultants and representatives of all such entities. Absent contrary express notice, it is understood and anticipated that all answers and responses to these Interrogatories and to Opposer's First Request for Production of Documents will include information and documents from and pertaining to all such predecessor and successor entities.

J. "Person(s)" means both natural persons, living or deceased, and to corporate or other business entities, whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of a corporate or other business entity "person's" directors, officers, members, employees, representatives, agents, and attorneys.

K. "Applicant's Marks" or the "Marks" means the marks which are the subject matter of U.S. Trademark Application Serial Nos. 79/023,935 and 79/023,934 whether used as a trademark, service mark, trade name, or corporate name, either alone or in association with other words or designs.

L. "Opposer's Mark" means the mark which is the subject of U.S. Trademark Registration No. 3,385,301.

M. "Applicant's Goods and Services" means the goods and services identified by Applicant in response to Interrogatory No. 1.

INTERROGATORIES

INTERROGATORY NO. 1

Identify and describe all of the goods and/or services Applicant has sold, is currently selling, or intends to sell, under Applicant's Marks. The identified goods and services shall hereinafter be referred to as "Applicant's Goods and Services."

INTERROGATORY NO. 2

Identify all Persons affiliated with Applicant who have any knowledge concerning the following issues:

- (a) the adoption of Applicant's Marks;
- (b) Applicant's knowledge of Opposer's Mark;
- (c) the sale of Applicant's Goods and Services;
- (d) the advertising of Applicant's Goods and Services;
- (e) the trade channels through which Applicant's Goods and Services travel;
- (f) any actual confusion between Applicant's Marks and Opposer's Mark;

- (g) the alleged likelihood of confusion between Applicant's Marks and Opposer's Mark.

INTERROGATORY NO. 3

State the date when Applicant first became aware of Opposer's Mark, and identify all facts relating thereto.

INTERROGATORY NO. 4

Describe all facts relating to the adoption of Applicant's Marks by Applicant.

INTERROGATORY NO. 5

To the extent Applicant claims to have acquired any rights in Applicant's Marks through any predecessor-in-interest, describe the facts pertaining to said acquisition.

INTERROGATORY NO. 6

Describe with particularity any searches or surveys performed on Applicant's behalf in connection with the Applicant's Marks or Opposer's Mark.

INTERROGATORY NO. 7

Describe with particularity the date and circumstances of first use of Applicant's Marks in connection with Applicant's Goods and Services (a) in commerce of any sort and (b) in interstate commerce.

INTERROGATORY NO. 8

Identify all federal and state trademark registration(s) or application(s) filed and/or obtained on behalf of Applicant for marks that include "GEOSPEC" and describe in detail the status of each application or registration.

INTERROGATORY NO. 9

Describe any policy Applicant has regarding the use of Applicant's Marks.

INTERROGATORY NO. 11

Describe all instances of actual confusion between Applicant's Marks and Opposer's Mark.

INTERROGATORY NO. 12

Identify, on an annual basis for each year since Applicant's Marks were first used, the amount of revenue received by Applicant for each of Applicant's Goods and Services.

INTERROGATORY NO. 13

Identify, on an annual basis for each year since Applicant's Marks were first used, the dollar amount of advertising and promotional expenditures for each of Applicant's Goods and Services.

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INTERROGATORY NO. 15

Identify all web sites that are operated on behalf of Applicant that display or use Applicant's Marks in any way.

INTERROGATORY NO. 16

Identify the geographical areas, by city, county, region and state as applicable, in which Applicant's Goods and Services are currently being offered for sale under Applicant's Marks

and, for each area, identify all such goods or services and the date on which they were first offered for sale.

INTERROGATORY NO. 17

Describe the channels of trade through which Applicant offers Applicant's Goods and Services.

INTERROGATORY NO. 18

Identify at least ten (10) representative customers to whom Applicant has sold Applicant's Goods and Services, including one or more representatives of each class of customers to whom Applicant markets or offers Applicant's Goods and Services.

INTERROGATORY NO. 19

Describe in detail the facts relating to any periods of non-use of Applicant's Marks in connection with any of Applicant's Goods and Services.

INTERROGATORY NO. 20

Identify and explain in detail any formal or informal objections that Applicant has ever received in connection with its use of Applicant's Marks.

INTERROGATORY NO. 21

Describe all oral or written agreements entered into by Applicant referring or relating to Applicant's Marks, including without limitation, partnerships, distributorships, marketing agreements, assignments, licenses, security agreements, or agreements settling disputes.

INTERROGATORY NO. 22

Identify all experts with whom Applicant has consulted or who Applicant intends to call as witnesses in this action and state the subject matter on which each expert is expected to testify.

INTERROGATORY NO. 23

Identify all fact or percipient witnesses who Applicant may call or will call in this action, and state the subject matter on which each individual is expected to testify.

INTERROGATORY NO. 24

Identify any instances in which Applicant's Goods and Services were offered for sale in the same trade channel as goods and services sold under Opposer's Mark.

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Identify all other uses of which Applicant is aware of the term "GEOSPEC" by any third party in relation to goods and services used in the construction industry for the time period from May 6, 2004 to the present.

INTERROGATORY NO. 26

Identify each instance in which Applicant has asserted that a third party's use of any mark incorporating the element "GEOSPEC" is likely to result in confusion as to the source of the goods or services offered by that party and any of Applicant's Goods and Services.

INTERROGATORY NO. 27

Identify each instance in which Applicant has asserted that a third party's use of any mark incorporating the element "GEOSPEC" is likely to dilute or has diluted Applicant's Marks.

INTERROGATORY NO. 28

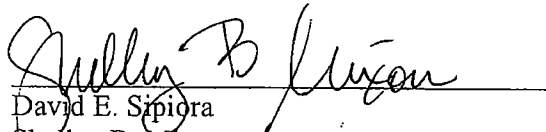
Identify all lawsuits or administrative proceedings, if any, past or present, regarding Opposer's Marks.

INTERROGATORY NO. 29

Identify all facts that Applicant believes supports Applicant's contention in paragraph 1 of the "Affirmative Defenses" section of Applicant's answers to Opposer's Notice of Opposition that there is no likelihood of confusion between Opposer's Mark and Applicant's Marks.

Dated: September 2, 2008

TOWNSEND AND TOWNSEND AND CREW LLP


David E. Sipiora
Shelley B. Mixon
1200 Seventeenth Street, Suite 2700
Denver, CO 80202
(303) 571-4000
(303) 571-4321 (fax)

Attorneys for Opposer Plasti-Fab LTD.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2008, a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES (Nos. 1-29)** was served by placing the same in the United States mail, postage prepaid and addressed to the following:

Bassam N. Ibrahim
Bryce J. Maynard
Buchanan Ingersoll PC
1737 King Street
Suite 500
Alexandria, VA 22314-2727

Attorneys for Applicant Kobelco Construction Machinery Co., Ltd.

Amir M. Oweiss

61462866 v3

EXHIBIT C

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial Nos. 79/023,935 and 79/023,934
Published: August 7, 2007
Applicant: Kobelco Construction Machinery Co., Ltd.
Mark: GEOSPEC and ACERA GEOSPEC (and design)
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

v.

KOBELCO CONSTRUCTION MACHINERY
CO., LTD,

Applicant.

Opposition No. 91179480 (parent)
Opposition No. 91179482

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION (NOS. 1- 20)

Opposer Plasti-Fab Ltd. ("Opposer"), by counsel, propounds the following requests for admission ("RFAs") to be fully and separately answered in writing by an officer or duly authorized agent of Applicant Kobelco Construction Machinery Co., Ltd. ("Applicant"), within thirty (30) days of the date of service hereof, or at such other time and place as may be mutually agreed upon by the parties, in accordance with Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 36 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

A. These RFAs seek answers as of the date on which Applicant responds and, as to those RFAs addressed to matters falling within Rules 26(e)(1) and (2) of the Federal Rules of Civil Procedure, shall be deemed to be continuing, requiring Applicant to serve upon Opposer such further answers promptly after Applicant has acquired additional knowledge or information relating in any way to those RFAs.

B. Where the RFAs request the identity of:

1. a person, state the name and current or last known address of each person, employer or business affiliation, and occupation and business position held;
2. a company, state the name, place of incorporation or organization, principal place of business, and the identity of the persons having knowledge of the matter with respect to which the company is named;
3. a document, state:
 - a) the identity of the person or persons who prepared it, the sender and recipient, if any;
 - b) the title or a description of the general nature of its subject matter;
 - c) the date of preparation;
 - d) the date and manner of distribution and publication, if any;
 - e) the location of each copy and the identity of the present custodian;
 - f) the identity of the person or persons who can identify it;
 - g) the contents of the document verbatim (or, in lieu thereof, a copy of the document); and

- h) if privilege is claimed, the specific basis for the claim;
- 4. an act or event, state:
 - a) a description of the act or event;
 - b) when it occurred;
 - c) where it occurred;
 - d) the identity of the person or persons performing said act (or, in case of an omission, the identity of the person or persons failing to act) or involved in said event;
 - e) the identity of all persons who have knowledge, information or belief about the act;
 - f) when the act, event or omission first became known; and
 - g) the circumstances and manner in which such knowledge was first obtained.

C. "Referring or relating to" means comprising, relating to, pertaining to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

D. To the extent that Applicant has any objection to answering any of the RFAs or producing responsive documents on the basis that the requested information or responsive documents are privileged or otherwise protected by the attorney-client privilege or work-product immunity, Applicant is requested to identify the subject matter and date of the information or document; identify the person who authored the information or documents; identify each person who ever received or had access to the information or document, or a copy thereof; identify the person or persons who presently have custody of the information or document; and state the basis of the alleged privilege or work-product immunity.

E. If Applicant is aware, with respect to any Interrogatory, or any Request listed in Opposer's First Request for Production of Documents served herewith, or any subsequent Interrogatory or Document Request that may be served on Applicant in this proceeding, that any responsive document once existed but has been destroyed, please identify the document, who destroyed it, why it was destroyed, and the date and circumstances under which it was destroyed.

F. Each matter of which an admission is requested will be deemed admitted pursuant to Federal Rule of Civil Procedure 36(a) unless a written answer or objection is served within 30 days of service of these requests.

G. All objections to individual requests for admission shall specifically state the reasons for the objections.

H. Answers to individual requests for admission shall specifically admit the matter, specifically deny the matter, or set forth in detail the reasons why the matter cannot be truthfully admitted or denied.

I. When good faith requires that you qualify your answer or deny only part of the matter for which an admission is requested, you must specify those portions of the request which you admit, and qualify or deny the remainder.

J. You may not give lack of information or knowledge as a reason for failure to admit or deny a particular request for admission unless you have made reasonable inquiry into the matter which is the subject of the request for admission and unless the information known or readily available to you is insufficient to enable you to admit or deny the matter and your answer so states.

K. If you believe that a matter for which an admission is requested presents a genuine issue for trial, you may not, on that ground alone, object to that request for admission.

L. With respect to each written response to these requests for admission, please restate each request immediately before your written response to that request.

M. Opposer incorporates herein by reference the definitions set forth in *Opposer's First Set of Interrogatories*.

REQUESTS FOR ADMISSION

1. Admit that the term "GEOSPEC" is not found in a dictionary.
2. Admit that Opposer provides construction related goods under Opposer's Mark.
3. Admit that you have no knowledge that the mark GEOSPEC is used in association with any good and/or services other than the goods and services provided by Opposer.
4. Admit that Opposer has used Opposer's Mark for over four years in association with construction related goods.
5. Admit that the term "GEOSPEC" has no common meaning in the English language.
6. Admit that Applicant is providing or intends to provide construction related goods under Applicant's Marks.
7. Admit that the term "GEOSPEC" has no meaning other than as trademark used by Opposer in association with the goods and services provided by Opposer.
8. Admit that the filing dates of the federal trademark applications for Opposer's Mark and the registration dates based on those applications predate the filing date of U.S. Trademark Application Serial Nos. 79/023,934 and 79/023,935 for Applicant's Marks.

9. Admit that Opposer's Mark is used in association with construction related goods in the United States.

10. Admit that the public has come to associate Opposer's Mark as a source of high quality construction related goods.

11. Admit that you are not aware of anyone other than Opposer who uses the mark "GEOSPEC."

12. Admit that there are no federal trademark registrations for the term "GEOSPEC" other than that owned by Opposer.

13. Admit that Opposer has not in any way authorized Applicant's use of Opposer's Mark for the goods set forth in U.S. Trademark Application Serial Nos. 79/023,934 and 79/023,935.

14. Admit that consumers of Applicant's Goods and Services are consumers of construction related materials.

15. Admit that "GEOSPEC" is a unique word and not a common word.

16. Admit that Opposer's Mark is distinctive.

17. Admit that the construction related goods provided by Opposer and the construction related goods intended to be provided by Applicant will be provided to persons or entities in the same industry.

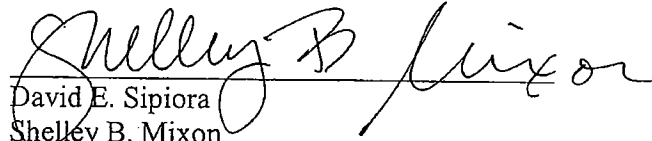
18. Admit that the word portions of all of Applicant's Marks and Opposer's Mark begin with "GEOSPEC."

19. Admit that the construction related goods provided by Opposer and the construction related goods provided by, or that are intended to be provided by, Applicant are provided to consumers through the same channels of trade.

20. Admit that Applicant provides or intends to provide construction related goods under Applicant's Marks.

Dated: September 2, 2008

TOWNSEND AND TOWNSEND AND CREW LLP

A handwritten signature in cursive script, reading "Shelley B. Mixon", written over a horizontal line.

David E. Sipiora

Shelley B. Mixon

1200 Seventeenth Street, Suite 2700

Denver, CO 80202

(303) 571-4000

(303) 571-4321 (fax)

Attorneys for Opposer Plasti-Fab Ltd.

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1737 King Street
Suite 500
Alexandria, VA 22314-2727

Attorneys for Applicant Kobelco Construction Machinery Co., Ltd.

Amir M. Omer

EXHIBIT D

Swaim, Amanda L.

From: Swaim, Amanda L.
Sent: Tuesday, October 28, 2008 7:12 PM
To: 'bryce.maynard@bipc.com'; 'bassam.ibrahim@bipc.com'
Cc: Sipiora, David E.; Weber, Amy L.
Subject: Plasti-Fab v. Kobleco

Dear Mr. Ibrahim,

Opposer Plasti-Fab's testimony period commences tomorrow, October 29, 2008, in Trademark Opposition Nos. 91179480 and 91179842. As such, today is Opposer's final day to file any motion to compel regarding Kobleco's discovery responses. Kobleco filed for an extension request on October 7, 2008, without first contacting Plasti-Fab to ask for consent. If so, Plasti-Fab would have worked with Kobleco to provide an adequate extension. Regardless, assuming Kobleco's 30-day extension request for responding to Plasti-Fab's discovery requests will be granted, Plasti-Fab will not receive Kobleco's responses until after the deadline to file a motion to compel has past.

Although Kobleco shows every intention of responding to Plasti-Fab's discovery requests, Plasti-Fab is filing a motion to compel responses to all outstanding discovery requests today in order to protect Plasti-Fab's rights. Please feel free to contact me if you have any questions. Thank you.

Regards,
Amanda Swaim

Amanda L. Swaim
Litigation Associate
Townsend and Townsend and Crew LLP
Direct: 303.607.3368
alswaim@townsend.com